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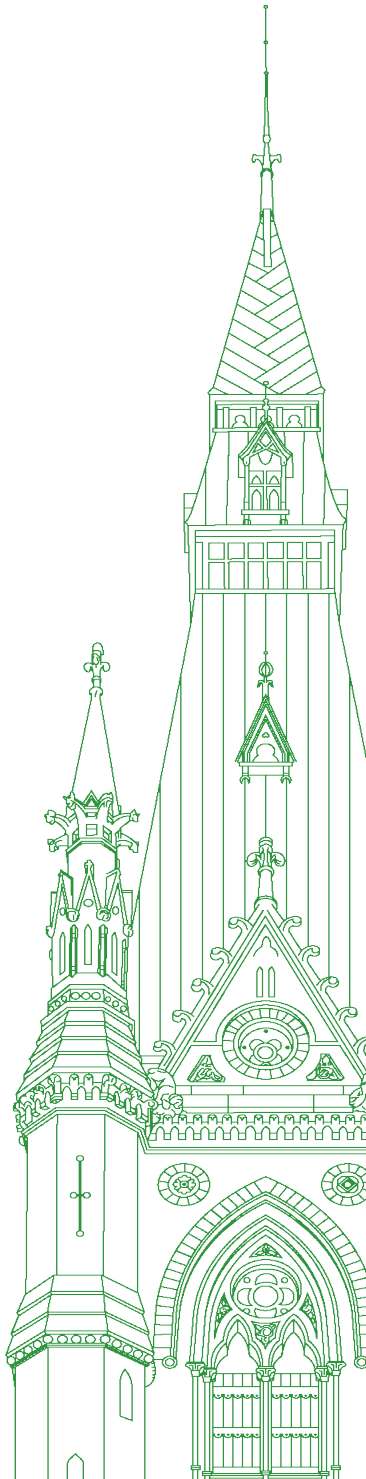

Chair: Mr. Ali Ehsassi

Standing Committee on Foreign Affairs and International Development

Thursday, November 28, 2024

● (1600)

[*English*]

The Chair (Mr. Ali Ehsassi (Willowdale, Lib.)): I call this meeting to order.

Welcome to meeting number 130 of the House of Commons Standing Committee on Foreign Affairs and International Development.

Today's meeting is taking place in a hybrid format. All witnesses have completed the required connection tests in advance of our meeting.

I'd like to remind both members and our witnesses to please wait until I recognize you by name before you speak.

Pursuant to the order of reference of Wednesday, June 5, 2024, the committee is resuming consideration of Bill C-353, the foreign hostage takers accountability act.

It gives me great pleasure to welcome the witnesses we have with us.

First, we have, as individuals, former ambassador Robert Fowler and former ambassador Sabine Nölke.

We also have, from Hostage International, the chief executive officer, Lara Symons, who is joining us virtually. We have the co-founder and president of Human Rights Action Group, Sarah Teich. From the International Civil Liberties Monitoring Group, we have the national coordinator, Mr. Tim McSorley. Last but certainly not least, from Secure Canada, we have the chief executive officer, Ms. Sheryl Saperia, and the director, Mr. Haras Rafiq.

Each of you will be provided five minutes for your opening remarks, after which we will go to the next witness. I would ask that everyone look over at me every once in a while. When you see me hold up my phone, that means things need to be wrapped up in about 20 seconds or so. That doesn't apply only to your opening remarks. It also applies when members are asking you questions, because each member is allotted a specific time.

All of that explained, we will start off with former ambassador Fowler.

The floor is yours. You have five minutes.

Mr. Robert R. Fowler (Retired Public Servant, As an Individual): Thank you, Mr. Chairman.

I offer my thanks to Mr. Bergeron for inviting me to offer views on the bill before you. I would also like to thank those who have taken the time and made the effort to put forward this bill, particularly Ms. Lantsman, who sponsored it and has defended its purposes so eloquently.

I strongly support any and all measures aimed at providing the managers of complex international hostage crises with additional tools and greater room to manoeuvre. There is a vigorous debate—only some of it in public—about whether governments should even negotiate, let alone make any kind of deal, with hostage-takers or, more specifically, pay ransoms or exchange prisoners to free their citizens, as the Americans did only yesterday. This dilemma is particularly acute when victims are sent into harm's way by those same governments, or by international organizations acting on behalf of their member states.

There tend to be significant differences between what governments do and what they say. That's exactly as it should be. Every time a principled position is invoked, there are exceptions. Many countries adopt what are, admittedly, more or less pragmatic approaches, while others proclaim immutable doctrine. However, I know for certain that every country has blinked at one time or another. Degrees of flexibility and innovation, along with a measure of humility, are essential ingredients to any successful outcome. This bill offers negotiators more flexibility and the opportunity for innovation. When doctrinaire and vainglorious posturing replaces effective and nuanced diplomacy, people die.

On November 3, 2015, the jihadis of Abu Sayyaf posted a Twitter video in which they threatened to murder John Ridsdel and fellow Canadian Robert Hall, along with their companions in captivity Marites Flor and Norwegian Kjartan Sekkingstad. The fact that both Hall and Ridsdel were subsequently brutally murdered and their families forced to endure the worldwide distribution of videos of their beheadings is a brutal catastrophe—and a source of significant distress to me and my family, as we all thought for months that this would be my fate. For the Ridsdel and Hall families, the nightmares will never end. Such a horrific outcome was, in my view, the result of our government's dogged intransigence, lack of imagination and utter ignorance of how these dramas actually play out in the real world.

It would seem to me that measures focused on bending the will of states to our purposes would principally apply to smaller, poorer and weaker states. Such measures are less likely to be effective against a major power such as China. Our government had all the tools it needed to win the release of the two Michaels at almost any point, which only makes their ordeal all the more upsetting. I am not here, though, to relitigate that fraught affair, and I must state that I'm terribly glad they're all finally safe.

I know well that grand declarations, whether or not they are widely endorsed, of what is right and good and of how the world ought to be managed, particularly by those insisting on how very good we are, are unlikely to change international behaviour, move the hearts of terrorists anywhere or alter the behaviour of states detaining our nationals. We Canadians take ourselves awfully seriously. We tend to believe that what we do and how we do it will have a great impact on what others do. In the main, this is simply not so. The countries of the world will not be moved to different behaviour by moral preaching from Canada, and Canadians around the world will be made no safer.

I have spent much of my life promoting, defending and trying to advance a rules-based international order, but I have always understood full well, although sometimes with ill grace, that those rules would regularly and inevitably be bent and often broken, most often by the most powerful, including our friends. Lest we forget, we are not powerful.

● (1605)

Looking back 16 years, the issue that causes me visceral anger is the lack of trust, courtesy and even basic respect on the part of too many of those charged with dealing with our families—that is, Louis Guay's and my family. This attitude, in our family's view, too often threatens, however unreasonably, to overshadow the hard, innovative work done by so many others to win our freedom.

Thank you. I look forward to your questions.

The Chair: Thank you very much, Ambassador Fowler.

We go next to Ms. Symons from Hostage International. She is joining us virtually.

You have five minutes, Ms. Symons.

Ms. Lara Symons (Chief Executive Officer, Hostage International): Thank you, Mr. Chairman.

Thank you for inviting me to provide evidence today. My comments on Bill C-353 will be based on my more than 25 years of experience working in the field of hostage-taking and arbitrary detention.

Prior to joining Hostage International, I spent 18 years in private sector crisis response and was privy to the confidential details of more than a thousand cases of hostage-taking and state detentions. At Hostage International, our support is provided to families affected by both incidents and to former captives. We provide information, guidance, practical support and access to tailored mental health therapy and legal and media advice. We have supported and continue to support Canadians affected by these incidents.

Given the focus of our charity's work, I applaud legislation that seeks to assist Canadians affected by hostage-taking and arbitrary detention. However, while I commend the spirit behind Bill C-353, I have serious concerns about its focus and assumptions. The bill addresses three different types of cases, perpetrated by different actors, without recognizing that each has to be resolved through different means and with a different level of government involvement. Criminal hostage-taking is generally resolved by the hostage's family or employers paying a ransom. In terrorist kidnaps, ransoms are illegal, so negotiation options are limited. Release may require mediation by other state or non-state actors. In arbitrary detention, the Canadian government has both a consular and a diplomatic role, which are key to safeguarding the well-being and release of its citizens.

Bill C-353 does not recognize these distinctions but focuses on two potential tools for assisting in bringing Canadians home. These are sanctions and incentivizing third party co-operation. The selection of these two mechanisms is bizarre, because neither has been shown to be effective in bringing about the release of hostages or detainees.

In criminal hostage-taking, the identities of the perpetrator prior to any arrest are rarely, if ever, known, so it would be impossible to place sanctions on them. In a terrorist kidnap, the Canadian government already has the ability to sanction terrorist groups and individuals, but doing so in a more targeted way would more likely provoke the hostage-takers into exacting revenge. Terrorists have no fear of killing hostages, as Robert Fowler just indicated. The murders of Robert Hall and John Ridsdel remain in our memories.

Sanctions are more relevant to arbitrary detentions, although, again, this is a mechanism already available to the Canadian government. I am not aware of any detainee released to date because of sanctions. It is arguable that some nationals have been detained in response to sanctions. Where third party incentives are concerned, there is again a real difference between hostage-taking and arbitrary detentions. Third party information is irrelevant in arbitrary detentions, which are resolved through diplomacy between governments.

In hostage-taking, on the other hand, third party individuals can and sometimes do provide information and even assistance, but it is hard to fathom what information and co-operation would help to bring about a hostage's safe release. Even if a third party provides the hostage's exact location, it would be hugely risky to carry out a rescue operation in foreign territory, which could lead to the hostage's death. While information about the perpetrators might help identify them, that is only relevant to seeking justice in the aftermath of an incident, not to bringing about the hostage's release. The unreliability of third party information in hostage-taking is notorious. Incentivizing it could lead to confusion and resource diversion that only serves to increase the risks to the hostage.

Finally, Hostage International applauds measures for consistent and reliable information for families. We witness first-hand the suffering of families and the frustration they often feel with their government's sharing of information. This is not limited to Canadian families. In every country we support in, families have similar grievances. This is often because expectations of what governments know or can do in a kidnap case and what they can safely share in an arbitrary detention case are unrealistic. What is important is how governments communicate with, involve and support families.

The Canadian government has faced harsh criticism from families in the past, but significant improvements have been made in recent years with much better feedback and a commitment to taking on lessons learned. The appointment of a senior officer for hostage affairs is an important step in government accountability.

● (1610)

The bill's focus on mental health support for families is positive, but Canada is already well ahead of its Five Eyes partners in having a victims fund that covers the cost of therapy for families. The government is also working consistently with its civil society partners, like Hostage International, to ensure that families access broader and longer-term support.

As for paragraph 20(c) in the bill on “facilitating communications”, it is at best ambiguous and at worst highly risky. Communications between families and criminal kidnappers are already assisted by the RCMP. Consular posts already try to access detainees in prison on behalf of families. These are—

The Chair: Can you wrap up in the next 15 seconds? We have other witnesses as well.

Ms. Lara Symons: No legislation is required, but if other types of communications are intended, I would be quite concerned. There's still work to do for better family support, but the proposed legislation does not address what is needed.

Thank you, Mr. Chairman.

The Chair: Thank you, Ms. Symons. You will have the opportunity to answer questions. Hopefully the remainder of your testimony will emerge during those questions.

We next go to the co-founder and president of Human Rights Action Group. We're grateful to have with us today Ms. Sarah Teich.

You have five minutes, please.

Ms. Sarah Teich (Co-Founder and President, Human Rights Action Group): Hello, everyone. Thank you for inviting me to participate in this meeting.

My name is Sarah Teich and I'm a lawyer based in Toronto. Together with David Matas, I co-founded Human Rights Action Group, a collective of lawyers working directly with community groups to combat mass atrocity crimes and gross human rights violations.

Most relevant to this study, though, is that three years ago I authored a legislative proposal on the subject of hostage-taking, which was co-published by the Macdonald-Laurier Institute and the Canadian Coalition Against Terror. The latter organization is now known as Secure Canada. Over the last year, we have worked closely with MP Lantsman to adapt that legislative proposal into Bill C-353.

I was originally planning at this point to summarize each part of the bill, but I think instead I'm going to use my remaining minutes to pre-emptively answer a question that I think is important: whether or not this bill expands consular services to individuals who are not Canadian citizens and whether or not that is advisable or feasible. I think we have to start by looking at exactly what services may be captured by this bill because what this bill does not do is mandate that Global Affairs Canada provide consular services writ large to permanent residents and to refugees who meet the definition of “eligible protected persons” in the bill.

The bill is narrowly tailored to hostage-taking, arbitrary detentions, and state-to-state relations, so if this bill becomes law, this is what it would do. It would enable the imposition of sanctions on perpetrators in response to cases of hostage-taking and arbitrary detention where the victim is a Canadian citizen, permanent resident or eligible protected person. It would mandate that the government provide support to families or direct them to it, including psychological support services. This would be if the victim is a citizen, permanent resident or eligible protected person. Finally, it provides for monetary rewards and/or resettlement for those who assist in their repatriation of a hostage. Again, this would be if the victim is a citizen, permanent resident or eligible protected person. None of this is a significant expansion of consular services, for which I understand resources may be limited.

The relevant metric here should be how many permanent residents and eligible protected persons are taken hostage or arbitrarily detained in state-to-state relations abroad. I don't have the figure offhand, but it seems a safe assumption that this figure is not in the millions. This figure is unlikely to even be in the hundreds.

It is also relevant to note that the United States' Robert Levinson Hostage Recovery and Hostage-Taking Accountability Act, which similarly enables the imposition of sanctions and mandates various supports for family members, uses the term “United States national” throughout the act, which is defined as including U.S. permanent residents, so this feature of the bill is not without precedent. I hope that helps clarify this aspect of the bill.

I would also like to share that the Australian Senate foreign affairs committee, which just released its report in the last few hours, agreed that it is important to legislate on this topic. It concluded, after hearing in a committee from Ms. Kylie Moore-Gilbert, who I understand has submitted written testimony here, and from me and others:

> The committee is also of the view that a robust framework would in itself act as a deterrence factor against Australian citizens being wrongly detained in the first instance. It considers that a clear and transparent framework would send a strong message to those states that choose to engage in hostage diplomacy and that Australia will not stand for [it].

That's from paragraph 3.115 on page 42 of the report.

Significantly, it also said that the U.S. Levinson act, which, as I noted, contains many of the same features as Bill C-353, "provides a suitable starting point for establishing an Australian framework." That's from paragraph 3.119 on page 43 of the report.

I think I'll leave it there. I'm happy to answer any questions from committee members. Thank you.

● (1615)

The Chair: Thank you very much, Ms. Teich.

We next go to the national coordinator for the International Civil Liberties Monitoring Group, Mr. Tim McSorley. He is also joining us virtually.

Mr. McSorley, you have five minutes.

Mr. Tim McSorley (National Coordinator, International Civil Liberties Monitoring Group): Thank you very much, Mr. Chair.

Thank you to the committee for this invitation to speak to Bill C-353.

I'm here on behalf of the International Civil Liberties Monitoring Group, a coalition of 44 Canadian civil society organizations that works to defend civil liberties in the context of national security and anti-terrorism measures. Through our work, we are acutely aware of the severe impacts faced by individuals who are taken hostage or arbitrarily detained. It is clear that more must be done to support the survivors of such acts and their families and loved ones.

We have been active in supporting Canadian citizens and permanent residents who have faced arbitrary detention abroad. These include the well-known cases of Maher Arar, Abdullah Almalki, Ahmad Abou-Elmaati and Muayyed Nureddin, all of whom were detained and tortured in Syrian prisons, as well as Khaled Al-Qazzaz, who was arbitrarily detained by the military government in Egypt, and Abousfian Abdelrazik, who was arbitrarily detained and tortured by Sudanese national security forces. More recently, we have advocated for the return of all Canadians arbitrarily detained in northeast Syria, including Canadian women and children in detention camps, and Canadian men being held incommunicado without charges and in life-threatening conditions in prisons.

We cannot be clearer that hostage-taking and arbitrary detention violate Canadian and international law and that Canada must act to address these crimes. While we agree with the intent of the bill to support survivors and their families, we are not certain that this bill is necessary. It could in fact have negative unintended consequences in countering arbitrary detention and could have broader consequences.

First, we are overall skeptical of attempts to establish new sanctions regimes in general. There is a growing body of research suggesting that the increase in unilateral sanctions regimes has not been effective in protecting rights internationally. They can result in wasted resources and can have severe unintended consequences for the delivery and provision of international aid.

If sanctions are believed to be necessary, they must be narrow and targeted. We believe this is not the case with Bill C-353. It would target not only individuals but also broadly defined foreign entities and entire foreign states, including, according to paragraph 5(3)(a), the property of any national within a sanctioned state. This poses a real threat of unintended consequences that could impact humanitarian aid, international assistance, peacebuilding and even diplomacy. It also means that such sanctions could, if a government wanted to, be used to punish broad swaths of foreign nationals, their governments and their associations in arbitrary ways.

Second, we are concerned about the low thresholds in this bill. For example, clause 5 allows for the levying of sanctions on the basis that the Governor in Council is "of the opinion" that a foreign national, state or entity is "responsible for, or complicit in" hostage-taking or state-to-state arbitrary detention. These are incredibly broad powers to be granted based solely on opinion. Moreover, clause 7, in allowing the minister to require any person to provide any information that is relevant to an order or regulation under clause 5, would permit the minister to go on a fishing expedition for information. There are no provisions for how that information is to be handled or disposed of.

Third, the definition of "arbitrary detention in state-to-state relations" will exclude some of the gravest cases of state-sanctioned arbitrary detention. The definition of arbitrary detention in this bill requires that "a person arbitrarily arrests or detains the individual to compel action from, or exercise leverage over, a foreign government."

In all of the cases I listed at the beginning, the arbitrary detention was either done with Canada's complicity or done for objectives unrelated to Canada, not done to compel action from a foreign government. Beyond the cases I stated above, we can also look, among others, to that of Huseyin Celil, a Canadian citizen and Uyghur human rights activist originally from China who has been arbitrarily detained by that government since 2006. Given that China's interest has nothing to do with influencing Canada or another state but rather with punishing human rights activism, we believe this act would not apply.

Fourth, the very broad application of sanctions within this legislation, including to anyone who makes available any property to a sanctioned state, entity or individual working on their behalf, would prohibit the provision of aid. While clause 6 allows the minister to provide a "permit to carry out a specified activity" that would violate an order under this act, the length of time it would take to secure a permit could have severe impacts on the timely delivery of aid and could lead to organizations simply not applying at all. Moreover, it could negatively impact instances where families or employers are negotiating with hostage-takers. They may need to act quickly, but they would risk violating this order unless they receive a permit.

● (1620)

Finally, we agree completely that more must be done to support the survivors of these horrendous acts and their families and loved ones. However, we do not believe this support should be tied to a sanctions regime, nor are we convinced the answer lies in new legislation. We would point instead to the recommendation of this committee's 2018 report on the provision of consular services. There are clearly other levers already available to the government to act in this area, if only there is the political will to use them. We urge the government and committee to further pursue that path.

Thank you. I look forward to your questions.

The Chair: Thank you, Mr. McSorley.

We'll go to Ms. Sheryl Saperia, chief executive officer of Secure Canada.

You have five minutes.

Ms. Sheryl Saperia (Chief Executive Officer, Secure Canada): Thank you very much.

Thank you for the invitation to be here, and thank you very much to Melissa Lantsman for sponsoring this piece of legislation.

If all the world is a stage, terrorism is theatre—horrific violence choreographed to terrorize a global audience. Of the vast array of asymmetrical terrorist tactics, hostage-taking is one of the most terrifying and heartbreaking. The wrongful holding of individuals to inflict harm or seek gain is not a new phenomenon. The biblical commandment of “do not steal” was understood by rabbinic scholars over 2,000 years ago to refer to the prohibition against kidnapping.

Hostage-taking is not just about the individual seized and the agony they suffer. In stealing a person, you take their family hostage and you take their people and country hostage. When a Canadian is wrongfully held by a malign state or non-state actor simply for being Canadian, it is Canada itself being held hostage, with the incarcerated person essentially acting as a surrogate for our country. We are living in an era in which hostage-taking and arbitrary detention in state-to-state relations constitute a growing threat to individuals, entire countries and the international order.

I have noticed that Canada's default position is often that a new legislative idea is unnecessary and that current laws do enough on their own, but bad actors constantly adjust and enhance their practices. Countries must therefore be nimble, creative, bold and principled in countering evolving threats. When it comes to hostage-taking specifically—a cost-effective weapon used by state and non-state actors to inflict extreme and disproportionate harm—it behooves our lawmakers to explore every possible tool to assist in repatriating the unwilling ambassadors who represent us in the dungeons of our adversaries and prevent this fate from befalling other Canadians.

At its very foundation, Bill C-353 was created to help Canada fulfill its fundamental responsibility to protect its people and uphold the value of its citizenship. The Australian Senate recently held hearings on the issue of hostage-taking and wrongful detention, and this very bill was discussed and lauded as a template for a similar Australian initiative. Dr. Kylie Moore-Gilbert was one of the witnesses who testified in Australia. She spent 804 days in the Iranian prison system, having received a 10-year sentence for espionage, which was denounced as baseless by the Australian government. She was released in a diplomatic deal negotiated by the Australian government in 2020, which saw Thailand release three Iranians convicted of terrorism offences in exchange for her freedom.

I want to share with you a message from Dr. Moore-Gilbert, the director of the Australian Wrongful and Arbitrary Detention Alliance: “We applaud and congratulate the Government of Canada for taking the initiative in spearheading the 2021 Declaration Against Arbitrary Detention in State-to-State Relations. We would note however that, in spite of Canada’s stated aim of leveraging the Declaration to push for impactful multilateral efforts at disincentivising the practice, very little discernible progress has been made toward this particular goal. The proposed Bill C-353 recognises that difficult decisions must be made to impose genuine costs on non-state actor hostage-takers and governments which arbitrarily detain Canadian citizens for diplomatic leverage. By explicitly setting out the tools through which the Canadian government is empowered to punish and deter hostage-takers and perpetrators of arbitrary detention, Bill C-353 provides decision-makers with a positive mandate to disincentivise the practice from occurring in the future and to achieve a semblance of justice for victims.”

I look forward to a fulsome discussion with members of this committee on the need to redouble our government's efforts to protect Canadians. I encourage you to direct some questions to my esteemed colleague Haras Rafiq, who is a board member of Secure Canada and a British counter-extremism expert. He is here beside me to join today's discussion and situate hostage-taking within the extremism and terrorism framework.

Finally, I would like to acknowledge Danny Eisen, the co-founder of Secure Canada. He has been at the centre of our organization's work on this file.

Secure Canada is an organization dedicated to combatting terrorism, extremism and other national security threats. We fully endorse Bill C-353 as sober, targeted legislation that is consistent with Canada's obligations under international law to take further action domestically to address the threat of hostage-taking and arbitrary detention in state-to-state relations.

Thank you.

● (1625)

The Chair: Thank you very much, Ms. Saperia.

Next we will go to former Ambassador Nölke.

You have five minutes for your opening remarks.

Ms. Sabine Nölke (Ambassador (retired), As an Individual): Thank you very much, Mr. Chairman and honourable members of the committee, for your invitation to appear before this committee today.

I'd like to give you an idea of the perspective I'm bringing to the examination of Bill C-353. I'm a retired Canadian diplomat and an international law practitioner. My areas of past practice and expertise include international peace and security, UN charter law, the law of armed conflict and atrocity crimes, terrorism and transnational crime, human rights, economic sanctions, disarmament and non-proliferation.

Since my retirement, I've published on more effective implementation of the UN Convention against Corruption through the tracking, tracing, seizure and repurposing of assets. I've also carried out a number of projects for Global Affairs Canada on a consultancy basis. These include framing the mandate of an independent panel of experts to address the issue of arbitrary detention in state-to-state relations in international law; a study on the legal framework in which Canada carries out its consular activities, including in emergency and crisis situations; and a discussion paper on strengthening Canada's operational response capacity with respect to international hostage-taking.

I believe that's how my name came to the attention of the committee, but I'm not currently employed by Global Affairs. I'm speaking entirely in my personal capacity.

In the interest of maximizing time for questions, let me give you a brief rundown of my views.

Bill C-353 is a well-intentioned effort to address the operationally complex and sensitive issue of individual Canadians who fall victim, at times tragically, to forces beyond the control of the Canadian government. In practice, however, I believe the bill to be both unnecessary and possibly counterproductive. It seeks to emulate part of the U.S. Robert Levinson Hostage Recovery and Hostage-Taking Accountability Act, but without taking into account important differences in the legal, contextual and operational frameworks between the U.S. and Canada.

In Canadian law, as confirmed by this committee in its report on Canada's consular services in 2018, issues relating to national and international security and foreign relations fall under the Crown prerogative rather than under the control of Parliament. In November 2023, the Federal Court of Appeal summarized the proper exercise of this power as the “responsibility of the executive to make decisions on matters of foreign affairs in the context of complex and ever-changing circumstances, taking into account Canada's broader interests.” Hostage-taking clearly falls under that, as does arbitrary detention in state-to-state relations.

Bill C-353, while intended to strengthen the government's tool kit in responding to hostage-taking and arbitrary detentions, has the effect of legislating in areas of national security and foreign relations. The decision to apply economic sanctions under the bill is correctly left to the Governor in Council, as it is, for example, in the Special Economic Measures Act. Creating a specific legal framework for the imposition of sanctions in response to hostage-taking could exponentially increase domestic pressure on this government and future governments to do so in practice. This risks handing hostage-takers and foreign states precisely the leverage they want and driving up the stakes for victims by boxing in the government's response. I agree with previous speakers on that particular issue.

In the case of arbitrary detention by foreign states for political purposes, Canada already has the power to impose sanctions, if they are considered useful, under subsection 4(1.1) of the Special Economic Measures Act. For terrorist hostage-taking, financial dealings with listed terrorist groups and their members are already subject to prohibitions under the Criminal Code. In other words, we already have access to the tools that Bill C-353 purports to provide.

● (1630)

There are other concerns I have about the bill. It conflates terrorist hostage-taking and arbitrary detention in state-to-state relations and criminal kidnappings. That point has already been made. De facto, it mandates the government’s response to hostage-takings to include permanent residents, in respect of whom Canada has no standing under international law to exercise consular or diplomatic functions. Also, the statutory requirement to extensively share information with families could compromise operational or national security, although I certainly agree with others that we need to do more to deal with families appropriately.

The compensation of individual victims from seized state assets is potentially fraught. Canada is currently subject to a complaint on this very issue before the International Court of Justice in respect of the Justice for Victims of Terrorism Act.

The specific requirement for parliamentary reporting is redundant. This committee and NSICOP already have broad mandates to review government actions in this field. I would note that in 2022, NSICOP made recommendations on how Global Affairs could strengthen its response to hostage-takings. Legislative action was not among those recommendations.

In conclusion, there are clearly multiple areas at the operational level in which Canada's response to terrorist hostage-takings and arbitrary detention by foreign states could well be strengthened, streamlined, made more coherent and, particularly, better funded, but Bill C-353, however well-intentioned, is not the answer, in my view.

Thank you.

The Chair: Thank you very much, Ambassador Nölke.

We will now open it to questions from members.

We start off with MP Chong for five minutes.

● (1635)

Hon. Michael Chong (Wellington—Halton Hills, CPC): Thank you, Mr. Chair.

Thank you to all of our witnesses for appearing to talk about a very important issue.

Mr. Fowler, I'd like to direct my questions to you. Thank you for appearing in front of our committee.

You have decades of experience within the Government of Canada as a deputy minister and as an ambassador. The first question I'd like to ask you relates to the second part of the bill, which is really about improving supports for families of people who have been taken hostage. Can you talk a bit about your experience and how the machinery within the department and the machinery between the department and central agencies could have been improved?

Mr. Robert R. Fowler: Thank you very much, Mr. Chong.

I've been out of the business of government for a long time. I very much would like to get to Mr. Chong's question, although something says that, really, my wife should be here answering that question. I was lying in the sand a long way away while she had to deal with what you're talking about.

Perhaps to sum it up, in listening to testimony a couple of days ago before your committee, I heard again and again that things have changed, that the government does this better, that they're better organized and that Global Affairs, my old department, is restructured and ready and able to do all this. That may well be the case; I simply don't know, but it sure wasn't the case 16 years ago.

Just to give you one example, Mary was not told that Louis and I were alive for 45 days. The government knew that we were alive immediately following our grab. They regularly had intelligence information suggesting that we were alive at different points after that. In terms of who was managing our affair, I have no idea. Both the RCMP and Foreign Affairs insisted that each of them were in charge. The PCO never said anything to anybody, and never focused attention on what was not happening.

We made two videos. Louis's family and mine were not told that the videos were made. Finally, Mary couldn't stand the lack of information. She went down to meet with the then secretary-general of the UN, who told her that we were alive and seemed to be in relatively good shape. Ban Ki-moon having told her that there was a video, she came back and demanded to see the video. It was then 45 days old. The RCMP said they'd have trouble translating it, but they'd see what they could do. Mary said she didn't need it translated, and they showed her the video.

Some weeks later, about 30 days later, she was going to London to see our fourth daughter, who lived there and needed a little care and attention. Before she left, she spoke to her interlocutors from the RCMP and said she'd be away, but to get in touch with her if anything came up.

She was having lunch with our high commissioner in London, who said she must be really happy to see the most recent video. Mary told him she didn't know what he was talking about. He left, made a phone call home and a few minutes later the RCMP called and told her that, yes, there was another video. When she said she wanted to see it, they told her that she would have to come back to Canada. It was so sensitive they couldn't possibly send it to London. That was idiotic, of course. They then did send it and she could see it.

If I may, I will read a little of the book I wrote, which perhaps highlights my concern in this regard.

On 23 February, in one of the rare briefings at Foreign Affairs, Mary asked for confirmation of the accuracy of media reports that suggested our captors had made a specific ransom demand. A very senior RCMP officer—in fact, the future commissioner of the RCMP—interrupted, pointed his finger across the table to where she sat and snapped, “As long as I am in charge of this investigation not one cent will be paid for the release of these high muckety-mucks.” At that point, her trust in the management of her case was destroyed. Louis's wife and my wife refused to attend future meetings.

No, relations with hostages 16 years ago were not very well managed.

● (1640)

Hon. Michael Chong: Thank you.

I don't have any other questions.

The Chair: Thank you very much.

Now we go to MP Alghabra for five minutes.

Hon. Omar Alghabra (Mississauga Centre, Lib.): Thank you very much, Mr. Chair.

I want to thank all of the witnesses not only for being here today but for all the work they've done over the years to help families and victims who've found themselves in a very difficult situation. I'm also humbled by the presence of Mr. Fowler.

Mr. Fowler, I'm grateful for your service and very delighted that you're here with us safely.

I don't subscribe to the idea that our current policies—or the execution of our policies as a government—are perfect, nor do I subscribe to the idea that there's no opportunity for additional reform or for the introduction of new legislation, for that matter. I think there might be room for additional tools.

My concern is that this current proposal doesn't do what it's intended to do. I question whether these new tools would help get a Canadian citizen or someone in the difficult situation of either arbitrary detention or hostage-taking out of harm's way. I also worry that it raises unreasonable expectations, to a degree that the government will be unable to fulfill them. Many Canadian families who have loved ones in a difficult situation may start expecting the Government of Canada to use these new tools at their disposal, but, really, they're without an appropriate application.

I'm going to start my questions with Ms. Teich.

I have concerns about expanding eligibility to non-Canadian citizens, particularly protected persons. Who decides who is a protected person? I know the definition of “protected person”. In Canada, we have the IRB deciding whether a claimant is a protected person or not. If someone finds themselves in a difficult situation abroad and they're not at home, who defines them as a protected person?

Ms. Sarah Teich: It's a great question.

An eligible protected person is someone with refugee status who is not inadmissible based on security grounds, based on the grounds of having violated human or international rights or due to criminality. It's essentially for refugees in Canada, with a couple of exceptions.

In terms of who decides, I expect it would be the relevant minister under the act, although I—

Hon. Omar Alghabra: I'm sorry. Allow me to interrupt for the efficiency of time.

Are you suggesting that the protected persons in this bill are intended to be those who have been found by the Canadian IRB to be a protected person?

Ms. Sarah Teich: I believe so, yes.

Hon. Omar Alghabra: The bill is not very clear about that. It says "protected persons". That could be a refugee claimant who made a submission to the United Nations. Would that person be eligible for this consular service?

Ms. Sarah Teich: I don't believe so, but I'd like to take this question on notice, if that's possible, and get back to you. I don't want to say yes or no if I'm not 100% sure.

Hon. Omar Alghabra: Yes. Therein lies the dilemma. Again, I worry about the expectation this bill would introduce for people around the world that the Canadian government would have a role in their situation.

Did you want to say something, Ms. Teich?

Ms. Sarah Teich: Yes.

In terms of your point on expectations, this is what this process is so good for. It fleshes out the details. The clause-by-clause in particular will do much more of that next week.

I'm not a legislator, but it strikes me that, if this bill becomes law, it will be accompanied by a press release and backgrounders online, and it would become clear who it applies to. I think the piece on managing expectations can be tackled whatever the answers to those questions are.

● (1645)

Hon. Omar Alghabra: I think it's much more complicated than that.

There's another point I want to raise. We heard Mr. McSorley talk about arbitrary detention. He used examples of arbitrary detention that I think people would argue about. Were they arbitrary detentions or were they other types of detentions? That's also a challenge with this bill. It raises expectations, once again, for any family with a person who's been unfairly detained in another country. All of a sudden, the Canadian government must utilize these tools. There are, unfortunately, plenty of Canadians who sometimes find themselves in a difficult situation.

Ms. Sarah Teich: When it comes to the point about what is arbitrary detention, I'll say in response that the definition this bill uses for "arbitrary detention in state-to-state relations" is drawn word for word from the multilateral declaration. Likewise, the definition of "hostage taking" is drawn from the Criminal Code.

This bill is not meant to capture arbitrary detention. This bill is meant to capture hostage-taking and arbitrary detention in state-to-state relations, which is a different term.

You're right. It wouldn't cover everything. It is quite narrowly focused in that way.

Hon. Omar Alghabra: If legislators are unable to make a differentiation and experts are unable to make a differentiation, you can imagine how a distraught family that has a loved one in a difficult situation would feel about the application of this bill.

I think I have run out of time.

Ms. Sarah Teich: Can I respond for just a few seconds to that?

Hon. Omar Alghabra: Yes.

Ms. Sarah Teich: That's fair enough. I imagine that there were similar concerns with the multilateral declaration. That declaration also used the term "arbitrary detention in state-to-state relations" and not "arbitrary detention".

The Chair: Thank you.

We'll next move to Mr. Bergeron.

You have five minutes.

[*Translation*]

Mr. Stéphane Bergeron (Montarville, BQ): Thank you, Mr. Chair.

Mr. Fowler, you said it may not be advisable for the government to reveal everything it can, wants or wishes to do.

Don't you think, then, that laying everything out in a piece of legislation goes against what you said, specifically that the government needs room to manoeuvre in terms of actions it does not discuss publicly?

[*English*]

Mr. Robert R. Fowler: Mr. Bergeron, I like this bill because it collects the tools that I saw could have been extremely useful in the situation I found myself in in Mali and Niger 15 years ago. All of the elements of this bill would have applied to that situation, that is, the Government of Mali could well have been subject to the threat of sanctions of some form or another. Individuals certainly could have been encouraged to be co-operative by paying them and possibly could have been encouraged to be helpful knowing that they might be received in Canada. All of those things I consider to be very useful tools.

I'm not a legislative expert and I didn't mean to suggest that those were the only tools. I certainly did mean to suggest that there were other tools that I didn't think government should talk about, and I still believe that strongly.

I don't look at this bill as being exclusive. I don't look at this bill as suggesting in any way that that's it; that's enough. It's not. Other things are needed.

[*Translation*]

Mr. Stéphane Bergeron: You did a CBC interview in 2011, if I'm not mistaken, and you said you were sure that the UN had paid a ransom for your release.

● (1650)

Mr. Robert R. Fowler: I wasn't the one who said that.

Mr. Stéphane Bergeron: All right.

Mr. Robert R. Fowler: A number of media reports suggested that a ransom had been paid.

Mr. Stéphane Bergeron: What do you think?

Mr. Robert R. Fowler: In my book, I was very clear that former prime minister Stephen Harper said outright that Canada had not paid any ransom and had not secured the release of any prisoner.

I think I added something about the fact that I had no reason not to believe the former prime minister.

That said, I'm not sitting here today because of my irresistible blue eyes. My kidnappers decapitated a British hostage six weeks after he and I were released. Six weeks later, a British colleague was released. I'm sure the same thing would have happened to us, but I'm happy it didn't.

Was a ransom paid? If so, I do not know who paid it. There are a number of possibilities, and I'm delighted to tell you that I don't know the answer.

Mr. Stéphane Bergeron: Do you think that, in some cases, Canada may have let other countries pay a ransom in exchange for the release of its own nationals?

Mr. Robert R. Fowler: In theory, it could have, but I have no idea. Was it another country or another organization? Who knows? I do know, though, that had that not been the case, I would definitely be dead.

A government's number one responsibility is to protect its citizens. That is much more important than adhering to great principles.

I mentioned what happened in the Philippines, and it cost Mr. Ridsdel and Mr. Hall their lives. They were killed, and the Norwegian was not. Few countries have a better reputation than Norway. It has a reputation of doing what it says, and is seen as a reasonable, respectable and generous country that honours its commitments. I agree, for that matter.

[*English*]

The Chair: Thank you.

We'll next go to MP McPherson.

You have five minutes.

Ms. Heather McPherson (Edmonton Strathcona, NDP): Thank you very much, Mr. Chair.

Thank you to all of the witnesses today for your testimony. It's been very interesting and informative. I deeply appreciate that.

I'm going to start by asking Mr. McSorley some questions about arbitrary detention.

In your testimony, you talked about Huseyin Celil and those coming from northeast Syria. I want to get your perspective on this, because on Tuesday, I asked MP Lantsman if she believed this bill would apply to Canadians, and she confirmed that she believed it would. Given your testimony and given your experience advocating for Canadians in complicated cases, I would like to know your thoughts on that.

How have you assessed the bill in this regard? I think you mentioned it a bit, but could it assist Canadians who are arbitrarily detained and their families, or does this still remain a challenge, particularly in cases where the Canadian government of the day does not have the political will to push for resolutions to these cases or an interest in that?

Mr. Tim McSorley: I noted at the last meeting that MP Lantsman believed this bill would apply to the cases of people like Maher Arar. I think I agree more with Ms. Teich's interpretation that the definition of “arbitrary detention in state-to-state relations” in this bill would not apply to his particular case. There can be an argument made about whether or not this bill is intended to be broad or narrow in its focus, but we believe that if we're going to seriously tackle issues of arbitrary detention internationally, these types of cases need to be included.

I take MP Alghabra's question about whether this would apply and whether we should be addressing every case where an individual believes there's been an unfair detention, but if I can take the case of Canadians in northeast Syria, they are being detained indefinitely without charges. I can't think of a different definition of what would be considered arbitrary detention other than cases where people are being detained without charges and with no access to justice. The fact that they're being held in such a way—not in order to influence the Canadian government, but because of unfounded accusations that have not led to legal charges—means they would be excluded from this bill.

I believe it wasn't the intention of this bill to capture those kinds of cases necessarily, but if we want to tackle these issues internationally, these types of cases must be included in discussions and, ideally, in any overall policy approach, whether it's about legislation, modifying consular services or making new policies at Global Affairs Canada.

● (1655)

Ms. Heather McPherson: Thank you for that.

I would like to talk a bit about how we could improve this bill. We know that it outlines sanctions against those who engage in arbitrary detention. How would this be operationalized for cases where the Canadian government has been unable to or, as we've seen in Syria, unwilling to take action on behalf of Canadian citizens in a timely manner?

What additional measures do you recommend be added to this bill to ensure that Canada has a more robust, consistent approach to supporting individuals in these complex cases? MP Lantsman said very clearly there was a lot of ministerial discretion within this bill. What are some of the things we could do to ensure that it is actually robust and consistent?

Mr. Tim McSorley: First of all, including the definition of “arbitrary detention” would include those individuals.

Going back to the 2018 report on consular services from this committee, there are questions around how consular services approach the allegations of torture and mistreatment of those being detained and the turnaround time. Action and policy should be put in place to ensure that each case is treated fairly, independently and without bias.

Looking towards that, maybe not all those things would actually fit in this kind of legislation, but those are the kinds of solutions we need to be looking at.

Ms. Heather McPherson: Wonderful. Thank you.

Many of the crimes this bill targets, such as violations of sanctions and human rights abuses, are already covered under Canada's Criminal Code and international legal framework. Obviously for many the concern is that these crimes are not being prioritized by the RCMP and other enforcement agencies because they don't necessarily have the resources to do that work. This has led to a situation where people who violate sanctions or engage in human rights violations largely, or often, go uninvestigated and unprosecuted.

How should Canada ensure that existing crimes, including those related to sanctions violations, are prioritized and that there are concrete measures in place to make sure that these crimes are actually investigated and prosecuted? Do you think there is room in this bill to address that?

Mr. Tim McSorley: I'm not sure what could be changed in this bill to more appropriately address that. I think it is a resources question. It would take better resourcing for the RCMP and other government bodies to conduct complex international investigations and gather evidence in order to bring charges against individuals who engage in arbitrary detention or hostage-taking internationally. We've seen in the past that the RCMP has laid charges in complex cases, even on individuals they don't really have a prospect of arresting and bringing to Canada.

One other thing I would point to is that in that same report from 2018, there was a suggestion to amend Canada's anti-terrorism laws to ensure that the provision of support to free hostage-takers who are taken by a terrorist entity does not violate Canada's counterterrorist financing or counterterrorism laws. That hasn't happened, so that's another area that we could be looking at.

Ms. Heather McPherson: Thank you very much.

Thank you, Mr. Chair.

The Chair: Thank you.

MP Chong, you have four minutes.

Hon. Michael Chong: Thank you, Mr. Chair.

I'd like to ask Mr. Fowler another question, and I'd like to frame the question first.

You mentioned in your opening remarks that there are two broad approaches governments have taken to hostage-taking. One is an immutable position, and the other is one that provides some creativity and flexibility, if I recall correctly. I want to explore that a bit.

It seems to me that there are two schools of thought on hostage-taking. One is that you don't negotiate with hostage-takers. You don't pay ransom. You don't do anything, because the argument goes that you would be providing incentives for more of the same. I've read other arguments from people who have done research in this field who argue the opposite. They have said there is no evidence that taking the first immutable position actually reduces incidents of hostage-taking. Some have even argued quite the opposite, that what happened in the Philippines, which you referenced earlier, leads to more incentives because it was broadcast, as you said, on social media around the world millions of times.

Can you give this committee your view on what the evidence points to and what the better approach is when it comes to governments managing hostage-taking and providing incentives and disincentives with respect to hostage-taking? Part one of the bill really is about a punishment regime that transfers the onus from the families of hostage-takers—which is the situation you have when there is an immutable set of principles saying that the government shouldn't do anything—to one where the government has an obligation to punish hostage-takers. It shifts that burden from families to the state. I'd like you to talk a bit about that.

● (1700)

Mr. Robert R. Fowler: That's a good question.

I'm of the firm belief that absolute maximum flexibility should be afforded to the people who have to deal with a hostage crisis. I'm not, therefore, in favour of broad, firm, clear, immutable constraints on what they can and can't do.

I have little time, you will have heard, for those who invoke great principles and then break them. The last thing I think anybody would want to see is “ransom or else” type of provisions in any kind of legislation. I certainly would never be light about whether some kind of ransom—I stress some kind—or quid pro quo for getting a Canadian out of such circumstances might be in order. There are lots of ways of doing that, and I wouldn't want to see them prescribed.

What I was saying earlier is that everybody blinks. By that I mean that the most firm, stern, immutable insisters on never negotiating and never making a significant concession do so when they have to and don't when they don't have to. Therefore, I would not wish to see Canadian negotiators wrapped into a constraining or binding principle that would diminish their ability to get the job done.

Hon. Michael Chong: Thank you.

The Chair: Thank you.

We next go to MP Oliphant.

You have four minutes.

Hon. Robert Oliphant (Don Valley West, Lib.): Thank you.

Thank you to all the witnesses for being here.

I am finding the testimony quite helpful in two ways. It reminds us of the importance of first-person narrative and the understanding of people of who have experienced this.

Mr. Fowler, I've read your book. I read it when I was doing consular affairs. As a parliamentary secretary, it was helpful for me to have that.

I have heard the problems of this bill. For me, I believe they are insurmountable. I believe they do exactly what you don't want to have done, which is constrain, confine and take away the fact that this work is more art than science. I believe that our diplomats are well trained. They're not perfect. Our consular affairs officials are well trained and sensitive, not perfect. However, you're alive, and we're glad you're here. We've had more success stories than we've had failures. It doesn't mean that we won't have failures.

I want to turn to Ms. Symons.

You were very helpful to me in understanding the various categories of people who seem to get lumped into this bill—that becomes problematic for me—and the differences among hostages taken by criminal organizations or criminals; hostages taken by terrorists; kidnapping, which may be somewhat different from that; arbitrary detention; and arbitrary detention in state-to-state relations. There are at least five or six categories that I think all demand a different set of tools because they have different motivations.

I won't support this bill. I want to send it back to the House with a negative recommendation. That doesn't mean that I don't think we can improve the work we do. It's partly about resources. I don't think it's a legislative fix. I think there are some things we could do.

You recognize that Canada is a leader on this with our arbitrary detention initiative, which is to say that we try to do this together with like-minded countries. Are there a few things we could recommend to the government that could be helpful to honour and validate the experience of Mr. Fowler but also not put Canadians at risk in the future because we're the soft touch for hostages?

● (1705)

Ms. Lara Symons: Thank you very much for your question. It's a slightly difficult one to answer, because you've asked me about arbitrary detentions and hostage-takings—both—and I think the answers would be slightly different.

Where arbitrary detentions are concerned, it would be helpful for families to have greater clarity about whether their case is an arbitrary detention. One thing that has been helpful south of the border is the Levinson act criteria, which set out what constitutes a wrongful detention in American terminology. However, let's face it, the United States did not have a good record in hostage-taking resolution before 2015. Indeed, they're still probably not doing terribly well in bringing home hostages who are taken by terrorists. They're a target for that.

The Five Eyes partners—and I think Robert Fowler was alluding to this—also have a poor record. That's probably because of the policy on no concessions to terrorists. I'm not advocating that this should change, but that is a fact and we have to recognize it. It means that other tools should be looked at. As you've said—and I would agree—the tools in this legislation are not the right ones.

The accountability of the government to the families and—

The Chair: Ms. Symons, could I ask that you wrap up within 20 seconds, please?

Hon. Robert Oliphant: Mr. Chair, if Ms. Symons has something she'd like to send in writing, that may be helpful. We would very much appreciate it, because I have a feeling that I asked a complex question and gave her no time to answer it.

The Chair: Absolutely.

Ms. Symons, you have another 20 seconds, but if there's any further elaboration, please feel free to send us written submissions.

That obviously applies to anyone who is here as a witness.

I apologize for the interruption. You have another 20 seconds remaining.

Ms. Lara Symons: Thank you, Mr. Chair.

What is useful is changing the framework and giving someone in government who actually understands these cases accountability to the families. That is missing at the moment: someone in government who has longevity in their role, has experience with hostage-taking and arbitrary detentions and is able to explain those cases to the family and do what they need to do, with flexibility to resolve them and bring hostages and detainees home.

The Chair: Thank you for that.

We next go to Mr. Bergeron.

You have two minutes, sir.

● (1710)

[*Translation*]

Mr. Stéphane Bergeron: Thank you, Mr. Chair.

I want to apologize to the witnesses. There are so many of you that we don't have enough time to ask all of you questions. Much as we would like to, it's impossible.

I am going to pick up where I left off with Mr. Fowler.

I sincerely believe that it was perhaps not wise for the Government of Canada to say that it would never pay a ransom. Similarly, I don't think it is wise for Canada to say that it will pay a ransom, because that could lead to a price on the heads of Canadians abroad, putting them at risk. Potential kidnappers would know that the Government of Canada was willing to pay money to secure Canadians' release.

That brings me back to what you told us, Mr. Fowler. A certain number of things perhaps shouldn't be shared so bluntly. What worries me about Bill C-353 is that it clearly lays out what the Government of Canada should or could do, and that could have consequences.

Would you agree with that?

Mr. Robert R. Fowler: I would agree.

[*English*]

Mr. Bergeron, I recommend that any legislation or any public statement by any Canadian government, politician or official remain utterly silent on the matter of ransom in all circumstances anywhere. It provides greater flexibility.

You raised something that I wanted to get back to. I've heard it raised in various situations, and I think Mr. Oliphant mentioned it a moment ago. I think the hostage-taking of Canadians because they're Canadian has been extremely rare. The Canadians who have been hostages were largely in the wrong place at the wrong time. They were rich, were from a rich country, were from a western country and were available, and they were taken. I honestly see very little that we're doing that would paste a sign on Canadians around the world saying, “I'm a Canadian. Take me.” That would be very unlikely, in my view.

I see that the chair is waving at me, so I will stop.

The Chair: Thank you, Ambassador Fowler.

Next we'll go to MP McPherson.

You have two minutes.

Ms. Heather McPherson: Thank you very much, Mr. Chair.

I'm going to ask some questions of Ambassador Nölke.

Thank you for being here today. Thank you for your testimony. We know you have a strong career representing Canada, particularly with regard to international law and international human rights.

You are someone with experience advising the Canadian government on these matters, so I'd like to hear your thoughts on the challenges Canada faces in—

The Chair: I apologize for interrupting, MP McPherson. Evidently, we're experiencing some sound problems on our end.

Ms. Heather McPherson: Did you hear anything I said, Mr. Chair, or should I start from the beginning?

The Chair: Yes, we can hear you.

Is it muffled for anyone? It's good.

Please proceed.

Ms. Heather McPherson: Maybe it's me who is muffled, not my sound, Mr. Chair. I will try to be more articulate.

Ms. Nölke, I'd like to hear your thoughts on the challenges Canada faces in responding to cases of arbitrary detention abroad. What measures or more effective steps could Canada adopt to support Canadians who are arbitrarily detained?

How does Canada currently balance diplomatic and trade priorities with the urgency of protecting Canadian citizens in these complex cases, and where should Canada be exerting more pressure? Do you think Bill C-353 offers the minister more flexibility or too much flexibility? How do you assess that when addressing these particular concerns?

Ms. Sabine Nölke: Thank you for that question. It's a very complex one. I hope I have enough time to answer it.

I don't think the bill offers the minister anything he or she doesn't already have.

When it comes to cases of arbitrary detention and state-to-state relations, those are matters of international peace and security because they amount to diplomatic coercion. That's where the security aspect comes in. If a minister were to decide that economic sanctions are the answer, they can already apply them under the Special Economic Measures Act.

Frankly, in a diplomatic coercion scenario, the best response is one where Canada does not stand alone. The current initiative on arbitrary detention and state-to-state relations is not the answer. It is an incremental step towards an answer. The government has created an international panel of experts that will hopefully make recommendations as to how state recourse can be more formalized. What can states do to respond comprehensively and meaningfully to another state seeking to coerce it into action through threats to its nationals? The tools are not legislative tools. The tools are diplomatic tools and multilateral tools, because frankly—I think Ambassador Fowler already said this—if Canada stands up and says or does something, it doesn't mean very much in the grand scheme of things.

Economic sanctions unilaterally imposed by Canada alone are not going to be effective. The solution has to be broader.

● (1715)

Ms. Heather McPherson: Thank you very much.

That might be my time.

The Chair: Thank you, Ambassador Nölke.

We next go to MP Epp.

You have four minutes.

Mr. Dave Epp (Chatham-Kent—Leamington, CPC): Thank you, Mr. Chair.

Thank you for all of the excellent testimony from the witnesses.

My understanding of Bill C-353 is that it provides options or tools in the tool chest. There is nothing mandatory about the bill, so I'd like to begin with what I heard as conflicting potential results if we add more tools to the tool chest.

Ms. Teich, in an article you wrote this summer, you quoted a British barrister, Amal Clooney, who said there seems to be a reluctance among many of the Five Eyes countries to use the existing tools that are there. They are there for supporting Bill C-353 and additional tools, in particular targeted sanctioning for hostage-taking and the potential for monetary rewards or PR status.

If I understood your testimony, Ms. Nölke, you are concerned that the existence of more tools and more publicity about those tools might put undue pressure on governments to act without discretion. That's probably stated too strongly. They would have a more difficult time resisting public pressure.

I would ask each of you to comment on that dynamic. Implicit in it is the quality of intelligence in our intelligence community and the ability to make good decisions where there's flexibility and no mandatory nature to those additional tools.

I'll start with Ms. Teich.

Ms. Sarah Teich: Yes, I quoted from barrister Amal Clooney. She found as part of a large study that there was an “apparent reticence”—those were the words she used—to impose targeted sanctions. She did a study looking at the U.K., Canada, the U.S. and the EU, I believe, and found that particularly in cases of arbitrary detention of journalists, targeted sanctions were not used in response—Magnitsky acts and other current tools.

That's why this bill, in my opinion, is so important. It provides, without anything mandatory related to sanctions, a very clear direction that targeted sanctions can be used for this purpose.

Mr. Dave Epp: Thank you.

Go ahead, Ms. Nölke.

Ms. Sabine Nölke: If the tool is available, it will be subject to debate in Parliament, and the first thing you'll hear is, “We have this legislation, so why aren't we using it?” That will raise the political pressure to act in a certain way. That is the concern. It increases the currency of the hostages. Once a hostage-taker knows that the victim is now the subject of sustained domestic political pressure, the hostage becomes more valuable and the resolution will become more expensive.

When it comes to choosing sanctions as a response, that choice is already available under the Special Economic Measures Act. If you put a specific name to this particular tool, it risks making the pressure to use that tool greater, which in turn increases the political value of the hostage. That would be my concern.

● (1720)

Mr. Dave Epp: I could perhaps understand that occurring while the legislation is being debated through Parliament, but once it's in place, do you think that perception in the hostage-taking community, if there is such a thing—

A voice: Oh, there is.

Mr. Dave Epp: —would be sustained?

It would be a tool. It would be, yes, for hostage-taking, but again, it would boil back to the ability of our intelligence community to make recommendations to the government on whether to act on a tool or not. Public pressure or push-back on a government at times isn't a bad thing.

The Chair: Answer very briefly.

Ms. Sabine Nölke: I think I'd probably be the first one to agree with that—absolutely yes—but in this particular case, elevating a hostage crisis to a political debate would be counterproductive, in my view.

The Chair: Thank you

Next we go to Mr. Zuberi.

You have four minutes.

Mr. Sameer Zuberi (Pierrefonds—Dollard, Lib.): Thank you, Mr. Chair.

Thank you to the witnesses for being here, both on Zoom and in person.

Mr. Fowler, it's good to hear from you and to see you in person. I'm so happy that you and your family had a positive end to your ordeal.

I want to start off my questioning with you, Ms. Symons. Essentially, I want to ask about Canadian money getting into the hands of criminals and terrorists through this legislation. Do you think that would be the case if the bill became law? Would money end up in the hands of criminals and terrorists through it? Could it end up in their hands?

Ms. Lara Symons: It could indeed. There's plenty of evidence out there that when there's a kidnapping, whether it's by a criminal group or a terrorist group, plenty of individuals want to take advantage of it to make some money themselves. We've seen many cases over the years of third party individuals coming forward, offering information and co-operation and asking to be paid for it or to be given some concession. The vast majority of times, that information is not good information. Those people who are involved in sharing the information are in cahoots with the people who are carrying out the hostage-taking.

I would be concerned that money would be going to individuals complicit in hostage-taking if third party individuals were incentivized.

Mr. Sameer Zuberi: I'm being heckled, Mr. Chair, by a member from the Conservative Party in the middle of this testimony. It's a bit unusual.

Let's take this further. As you said, we now might end up paying a listed terror organization in Canada. When we aren't supposed to be subsidizing listed terrorist groups here at all, this legislation provides the possibility for that to happen. How do we square that circle?

Ms. Lara Symons: That's a very good question. I don't know how you square that circle.

It's hypocritical, I guess, because families aren't allowed to pay ransoms to terrorist groups, but if government is, that doesn't come across very well. I'm not sure how you can square it.

Mr. Sameer Zuberi: I'd like to go to Ambassador Nölke.

With respect to victims, their families and those who have been taken hostage or arbitrarily detained, to your knowledge, were there ever instances when people—families or individuals—wanted their privacy to be respected in such a way that their story did not get out into the public?

Ms. Sabine Nölke: There have certainly been cases, CBC reporter Mellissa Fung, for example. This was a case where information was clamped down on very hard and it did not get released until after she was released. There are certainly circumstances where secrecy will assist the resolution effort.

● (1725)

Mr. Sameer Zuberi: This legislation says that the minister must make a summary report. How would those two things contradict each other?

The Chair: Answer very briefly.

Ms. Sabine Nölke: The concern I have is not that information gets transmitted to the families. Ambassador Fowler is quite correct that the families need to be informed of what's going on. However, when you're dealing particularly with terrorist hostage cases, there's intelligence involved, and the families are not necessarily cleared to receive that information. They might be under stress and information that could be prejudicial could be released, so there's a delicacy there in making information exchanges mandatory. There has to be discretion there.

The Chair: Thank you.

We next go to MP Hoback for four minutes.

Mr. Randy Hoback (Prince Albert, CPC): Thank you, Chair.

I want to thank all the witnesses for being here this afternoon.

This is such a serious issue. We want to make sure that all of the tool box is rapidly available and is at the disposal of our consular people so they can make the appropriate decisions and take action.

I'm curious. I view this as a Crime Stoppers type of legislation in some ways. You're providing the ability to pay informants to give you data and offering residency to people in situations of being threatened themselves if they provide you with data.

Where does that exist right now within the government, Ms. Nölke? Could you do that tomorrow if that was the scenario?

Ms. Sabine Nölke: I don't think we can do it right now. Whether it's advisable to do it is a different question.

Mr. Randy Hoback: That advisability would depend on the scenario. Is that correct?

Ms. Sabine Nölke: Yes.

Mr. Randy Hoback: It depends on the situation. The consul or the person looking at all the facts could decide in a situation that the information is valuable and the person could possibly lose their life if they stay within a country or region.

Wouldn't they be better off making a decision instead of trying to go back to the bureaucracy to go through 30 different steps before they make a decision?

Ms. Sabine Nölke: I'm aware of cases where we have brought witnesses in complex criminal investigations in transnational organized crime scenarios to Canada.

Mr. Randy Hoback: The process to do that right now would probably not happen within two weeks, would it?

Ms. Sabine Nölke: No, not necessarily. I doubt that.

Mr. Randy Hoback: Would it happen in six weeks?

Ms. Sabine Nölke: I can't give you a time estimate.

Mr. Randy Hoback: You can see the importance of legislation in this scenario to give flexibility, because time is of the essence. Would you not agree?

Ms. Sabine Nölke: Yes. The problem is that you need to know your customer. I think Ms. Symons has already alerted us to that fact. We might end up financing a terrorist organization by supporting an individual who is—

Mr. Randy Hoback: Whoa. Let's take a step back, because it was very clear in the testimony we had last week from Ms. Lantsman that this would not go to terrorist organizations. This is like Crime Stoppers. This is going to the whistle-blower. This is going to the person aiding us. No terrorist organization is going to do that.

Ms. Sabine Nölke: Well, not necessarily—

Mr. Randy Hoback: For us to cross-reference it to that type of thing I think is unfair.

Mr. Rafiq, you were shaking your head. How do you see this working out, in your opinion?

Mr. Haras Rafiq (Director, Secure Canada): Thank you to the committee for inviting me here.

I want to say this with as much humility as possible. I want to say this as one of the world's top 10 experts recognized in counterterrorism in the western world. I want to say this as the author of the countering violent extremism strategy that the U.S. has adopted, originally the PVE strategy in the U.K. I want to say this as an adviser to four and a half British prime ministers. I say “half” because one of them didn't last very long—bipartisan. I want to say this as the former adviser to the head of counterterrorism in Europol, Gilles de Kerchove. I want to say this as somebody who was not directly involved in Mr. Fowler's case, although he was in my orbit and my team's orbit. If my team and I—and I've been doing this for over 20 years now on the ground and in policy—had had these tools, we'd have saved more lives and would have been able to disrupt potential terrorist financing in the U.K. We would have been able to not only save lives but be proactive.

It doesn't mean that every single tool in the tool kit would have been used for every single case. That's why I was shaking my head.

● (1730)

Mr. Randy Hoback: That's why I come back to this: It's up to the person who's making decisions at that point in time to decide which tool to use on that occasion.

Mr. Haras Rafiq: Absolutely.

Mr. Randy Hoback: Thank you for your time.

Thanks, Chair.

The Chair: Thank you.

We next go back to MP Alghabra.

You have four minutes.

Hon. Omar Alghabra: Thank you very much, Mr. Chair.

I want to once again thank the witnesses. It's been a really interesting conversation.

I want to direct my questions to Ms. Nölke and build on what MP Epp asked about—the political pressure. His point is that maybe once the debate on this bill dies down, it will no longer become a political football.

I respectfully disagree, because if I had a family member or a loved one who found themselves in a difficult situation, the first thing I would demand would be that my government apply these tools. Regardless of my ability to understand the complexity of the situation, I am emotionally invested, and I want the government to quickly use tools and impose sanctions, even though it may not be advisable in the situation.

Ms. Nölke, can you comment on that?

Ms. Sabine Nölke: Mr. Alghabra, you've said exactly what I wanted to say. Having the visible availability of these sanctions will increase the pressure to use them. We've seen that in other contexts, where there's been pressure to impose sanctions in particular situations and they've been pretty ineffective. It's one of those tools that can be politically useful, but practically not so much.

Hon. Omar Alghabra: The other part of the unreasonable expectation is that every Canadian family member who has a loved one in arbitrary detention now, whether it fits into "arbitrary detention in state-to-state relations" or it doesn't, still feels that the government must apply these tools immediately. You can imagine, whether the law is explicit or not, the expectation, which is sometimes unreasonable, that those family members, those Canadian citizens, will have that the government enact these tools immediately, in a potentially counterproductive way.

Ms. Sabine Nölke: I would agree with that assessment, yes.

Hon. Omar Alghabra: If there's an agreement that government has these tools already on the books but they're not explicitly put the way this bill does, then why do we need this bill? The only thing this bill does is increase expectations, unreasonable expectations, which could perhaps cause more heartache to family members who feel that the government is not using all the tools that are necessary, even though the government is and is being guided by the intelligence and information it has.

I think this bill might end up, instead of solving a problem, causing additional heartache for Canadians who have loved ones in a very difficult situation.

Ms. Sabine Nölke: That's why in my conclusion I said the answer is probably not a legislative one. The answer to strengthening our ability to respond to these incidents will be operational and resource-based. We need to break down silos that exist between departments and we need to streamline our response capability.

Ms. Symons's suggestion that we have a dedicated official who does nothing but deal with hostage cases is an absolutely valid one and I very strongly support it. Operational and resource-based responses would be better than legislative ones.

The Chair: Thank you.

We'll go to Mr. Bergeron.

You have two minutes, sir.

[*Translation*]

Mr. Stéphane Bergeron: Thank you, Mr. Chair.

Ms. Saperia, I gather that your organization is firmly committed to fighting terrorism. You gave the example of a prisoner exchange that resulted in the release of three Iranians convicted of terrorism.

If I understood correctly, you applauded that prisoner exchange.

Doesn't that go against your organization's philosophy, which I assume is to take as many terrorists as possible off the streets?

● (1735)

[*English*]

Ms. Sheryl Saperia: The reference I made was to Kylie Moore-Gilbert, an Australian who was released following that trade. What she was saying is that Australia did not have this kind of bill and she wished those tools had been available in Australia. What ultimately ended up happening to lead to her release was the exchange of three convicted terrorists. Her point was that she wished Australia had had the legislative tools that are being proposed in Bill C-353.

From my perspective, there is a significant difference between money going to the organizers of hostage-taking as a ransom and money going to peel off a bad guy who can be wooed and incentivized to walk away from his terrorist activity to start a new life. The incentivization could also go toward—of course, I'm being facetious here—the janitor who's not involved but might have intimate information of the case that might secure the release of a human being.

To my mind, it is worth exploring every possible tool. None of this is mandatory. This is discretionary.

The Chair: Thank you, Ms. Saperia.

For our last questions, we'll go to MP McPherson.

You have two minutes.

Ms. Heather McPherson: Thank you very much, Mr. Chair.

I want to follow that last comment about how it is all discretionary. I'm going to direct my comments to Mr. McSorley, if I may.

One of the concerns I have with this legislation, as we have heard from other witnesses and other members of Parliament, is that there is some potential for political abuse. In particular, it would be due to broad language, which could allow for sanctions against individuals, entities or even entire foreign states.

We know the bill has a low threshold for ministerial discretion, specifically with the "in their opinion" standard. This raises concerns. Many times, New Democrats have raised the issue that the government is not standing up for Canadians around the world, is not doing enough and is making decisions that are political rather than using adequate legal safeguards.

How would you view the effectiveness of broadly applied sanctions in achieving their intended outcomes? What are the improvements or safeguards that you would suggest to ensure that sanctions are narrowly focused, are based on clear evidence and are subject to proper judicial oversight rather than just subjective political opinion?

Mr. Tim McSorley: I'd reiterate what I said earlier about how there's a growing body of research and studies that question whether unilateral sanctions are effective. In this case, if we were to look at potential ways to improve this legislation, it's modelled in large part on Canada's Magnitsky law and is targeted specifically to individuals. If we were to look at sanctions, having targeted sanctions in regard to specific individuals, not entire entities, entire states or entire governments, would allow some form of protection, although we're still fairly critical of that.

Beyond that, there's a concern, as you said, that these sanctions can be levied if the Governor in Council is of that opinion. We believe that to improve this, some form of judicial safeguard could be put in place so it would have to be reviewed judicially within a certain amount of time if it's not pre-authorized by a judge. Of course, that also runs into the question that's been raised about the discretion of government and ministers in these types of cases. It raises the question of whether there is a conflict there between a judicial authorization and ministerial discretion to act on these issues.

All those points make it incredibly difficult to find clear ways to amend this legislation so that it would be workable to achieve its goals.

Ms. Heather McPherson: Thank you.

The Chair: Thank you very much.

That concludes our questions.

Allow me to thank you all for your very informative and rich perspectives on these challenging questions.

Go ahead, Mr. Bergeron.

● (1740)

[*Translation*]

Mr. Stéphane Bergeron: Mr. Chair, with your permission, I'd like to give notice of the following motion:

> Given that, during the 44th Parliament, since November 22, 2021, the Minister of Foreign Affairs has appeared only once before the members of this committee in connection with the study of government estimates, and that she has appeared only four times since the beginning of this Parliament, out of 130 sittings; that since his appointment—

[*English*]

Hon. Robert Oliphant: I have a point of order.

I'm not disagreeing with this necessarily, but I want to check whether notice for the motion has been given to the committee.

[*Translation*]

Mr. Stéphane Bergeron: That's what I am doing as we speak.

[*English*]

The Chair: He's giving notice.

Hon. Robert Oliphant: We're not in a business meeting, though, so you're not moving it. I missed the first part.

Mr. Stéphane Bergeron: No.

Hon. Robert Oliphant: Okay, thank you.

[*Translation*]

Mr. Stéphane Bergeron: I will finish reading the notice of motion:

> —that since his appointment on July 26, 2023, the Minister of International Development has testified only once before the committee; the members of the Standing Committee on Foreign Affairs and International Development express their deep disappointment that the Ministers ignore the invitations sent by the committee, in particular those concerning the study of their department's credits; and that this be reported to the House.

Thank you, Mr. Chair.

[*English*]

The Chair: Thank you very much, Mr. Bergeron.

Ambassador Nölke, Ambassador Fowler, Ms. Saperia, Mr. Rafiq, Ms. Symons, Ms. Teich and Mr. McSorley, thank you very much for your time. We are very grateful indeed.

The meeting stands adjourned.